

# TERMS AND CONDITIONS FOR ONLINE SALE OF GOODS

1. THIS DOCUMENT CONTAINS IMPORTANT INFORMATION REGARDING YOUR RIGHTS AND OBLIGATIONS, AS WELL AS CONDITIONS, LIMITATIONS, AND EXCLUSIONS THAT MIGHT APPLY TO YOU. PLEASE READ IT CAREFULLY.

THESE TERMS REQUIRE THE USE OF ARBITRATION TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS.

BY PLACING AN ORDER FOR PRODUCTS OR SERVICES FROM WUTKE LLC d/b/a The Online Fence Store ("The Online Fence Store") WEBSITE, YOU ACCEPT AND ARE BOUND BY THESE TERMS AND CONDITIONS.

YOU MAY NOT ORDER OR OBTAIN PRODUCTS OR SERVICES FROM THIS WEBSITE IF YOU (A) DO NOT AGREE TO THESE TERMS, (B) ARE NOT THE OLDER OF (i) AT LEAST 18 YEARS OF AGE OR (ii) LEGAL AGE TO FORM A BINDING CONTRACT WITH The Online Fence Store, OR (C) ARE PROHIBITED FROM ACCESSING OR USING THIS WEBSITE OR ANY OF THIS WEBSITE'S CONTENTS, GOODS OR SERVICES BY APPLICABLE LAW.

These terms and conditions (these "**Terms**") apply to the purchase and sale of products and services through The Online Fence Store's (the "**Site**"). These Terms are subject to change by The Online Fence Store (referred to as "**us**", "**we**", or "**our**" as the context may require) without prior written notice at any time, in our sole discretion. The latest version of these Terms will be posted on this Site, and you must review these Terms before purchasing any product or services that are available through this Site. Your continued use of this Site after a posted change in these Terms will constitute your acceptance of and agreement to such changes.

These Terms are an integral part of the Website Terms of Use that apply generally to the use of our Site. You should also carefully review our Privacy Policy before placing an order for products or services through this Site.

2. **Order Acceptance and Cancellation.** You agree that your order is an offer to buy, under these Terms. All orders must be accepted by us or we will not be obligated to sell the products or services to you. We may choose not to accept any orders in our sole discretion. After having received your order, we will send you a confirmation email with your order number and details of the items you have ordered. Acceptance of your order and the formation of the contract of sale between The Online Fence Store and you will not take place unless and until you have received your order confirmation email.

3. **Prices and Payment Terms.**

(a) All prices posted on this Site are subject to change without notice. The price charged for a product or service will be the price in effect at the time the order is placed and will be set out in your order confirmation email. Posted prices do not include taxes or charges for shipping and handling.

(b) Terms of payment are within our sole discretion and payment must be received by us before our acceptance of an order. You represent and warrant that (i) the credit card

information you supply to us is true, correct, and complete, (ii) you are duly authorized to use such credit card for the purchase, (iii) charges incurred by you will be honored by your credit card company, and (iv) you will pay charges incurred by you at the posted prices, including all applicable taxes, if any.

4. **Shipments; Delivery; Title and Risk of Loss.**

(a) We will arrange for shipment of the products to you. Please check the individual product page for specific delivery options. You will pay all shipping and handling charges specified during the ordering process.

(b) Title and risk of loss pass to you upon our transfer of the products to the carrier. Shipping and delivery dates are estimates only and cannot be guaranteed. We are not liable for any delays in shipments.

5. **Returns and Refunds.** Except for any products designated on the Site as non-returnable, we will accept a return of the products for a refund of your purchase price, less the original shipping and handling costs, provided such return is made within 30 days of shipment and provided such products are returned in their original condition.

You are responsible for all shipping and handling charges on returned items. You bear the risk of loss during shipment.

6. **LIMITED WARRANTY.**

**THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS, WHICH VARY FROM STATE TO STATE.**

**WE WARRANT THAT DURING THE WARRANTY PERIOD, THE PRODUCTS PURCHASED FROM THE SITE WILL BE FREE FROM DEFECTS IN MATERIALS AND WORKMANSHIP.**

**WE LIMIT THE DURATION AND REMEDIES OF ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TO THE DURATION OF THIS LIMITED WARRANTY.**

**SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.**

**OUR RESPONSIBILITY FOR DEFECTIVE PRODUCTS IS LIMITED TO REPAIR, REPLACEMENT OR REFUND AS SET FORTH IN THIS WARRANTY STATEMENT.**

(a) **Who May Use This Warranty?**

This limited warranty extends only to the original purchaser of products and services from the Site. It does not extend to any subsequent or other owner or transferee of the product or any transferee or other beneficiary of the service.

(b) What Does This Warranty Cover?

This limited warranty covers during the Warranty Period (as defined below) defects in materials and workmanship in products and services purchased from the Site.

(c) What Does This Warranty Not Cover?

This limited warranty does not cover any damages due to:

- (i) transportation;
- (ii) storage;
- (iii) improper use;
- (iv) failure to follow the product instructions or to perform any preventive maintenance;
- (v) modifications;
- (vi) combination or use with any products, materials, processes, systems or other matter not provided or authorized in writing by manufacturer;
- (vii) unauthorized repair;
- (viii) normal wear and tear; or
- (ix) external causes such as accidents, abuse, or other actions or events beyond our reasonable control.

(d) What is the Period of Coverage?

This limited warranty starts on the date of your purchase and lasts for one year ("**Warranty Period**"). The Warranty Period is not extended if we repair or replace a warranted product or re-perform a warranted service. We may change the availability of this limited warranty at our discretion, but any changes will not be retroactive.

(e) What Are Your Remedies Under This Warranty?

With respect to any defective products during the Warranty Period, we will, in our sole discretion, either: (i) repair or replace such products (or the defective part) free of charge or (ii) refund the purchase price of such products. We will also pay for shipping and handling fees to return the repaired or replacement product to you if we elect to repair or replace the defective products.

(f) Limitation of Liability

**THE REMEDIES DESCRIBED ABOVE ARE YOUR SOLE AND EXCLUSIVE REMEDIES AND OUR ENTIRE OBLIGATION AND LIABILITY FOR ANY BREACH OF THIS LIMITED WARRANTY. OUR LIABILITY WILL UNDER NO CIRCUMSTANCES EXCEED THE ACTUAL AMOUNT PAID BY YOU FOR THE**

**DEFECTIVE PRODUCT OR SERVICE THAT YOU HAVE PURCHASED THROUGH THE SITE, NOR WILL WE UNDER ANY CIRCUMSTANCES BE LIABLE FOR ANY LOSS OF PRODUCTION, WORK, DATA, USE, BUSINESS, GOODWILL, REPUTATION, REVENUE OR PROFIT, ANY DIMINUTION IN VALUE, COSTS OF REPLACEMENT GOODS OR SERVICES, OR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES OR LOSSES, WHETHER DIRECT OR INDIRECT.**

**SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.**

(g) What can you do in case of a dispute with us?

The informal dispute resolution procedure detailed in Section 11 is available to you if you believe that we have not performed our obligations under this limited warranty or these Terms.

7. **Goods Not for Resale or Export.** You agree to comply with all applicable laws and regulations of the various states and of the United States including all Export Regulations, as defined below. You represent and warrant that you are buying products or services from the Site for your use, and not for resale or export. Products purchased from the Site may be controlled for export purposes by export regulations, including but not limited to, the Export Administration Act of 1979 (50 U.S.C. 2401-2410), the Export Administration Regulations promulgated thereunder (15 C.F.R. 768-799), the International Traffic in Arms Regulations (22 C.F.R. 120-128 and 130) and their successor and supplemental regulations (collectively, "**Export Regulations**").

8. **Privacy.** Our Site's Privacy Policy governs the processing of all personal data collected from you in connection with your purchase of products or services through the Site.

9. **Force Majeure.** We will not be liable or responsible to you, nor be deemed to have defaulted or breached these Terms, for any failure or delay in our performance under these Terms when and to the extent such failure or delay is caused by or results from acts or circumstances beyond our reasonable control, including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to our workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

10. **Governing Law and Jurisdiction.** All matters arising out of or relating to these Terms are governed by and construed in accordance with the internal laws of the State of Montana without giving effect to any choice or conflict of law provision or rule (whether of the State of Montana or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Montana.

11. **Dispute Resolution and Binding Arbitration.**

(a) **YOU AGREE TO GIVE UP ANY RIGHTS TO LITIGATE CLAIMS IN A COURT OR BEFORE A JURY. OTHER RIGHTS THAT YOU WOULD HAVE IF YOU**

**WENT TO COURT MAY ALSO BE UNAVAILABLE OR MAY BE LIMITED IN ARBITRATION.**

**ANY CLAIM, DISPUTE OR CONTROVERSY (WHETHER IN CONTRACT, TORT OR OTHERWISE, WHETHER PRE-EXISTING, PRESENT OR FUTURE, AND INCLUDING STATUTORY, CONSUMER PROTECTION, COMMON LAW, INTENTIONAL TORT, INJUNCTIVE AND EQUITABLE CLAIMS) BETWEEN YOU AND US ARISING FROM OR RELATING TO YOUR PURCHASE OF PRODUCTS OR SERVICES THROUGH THE SITE, WILL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION.**

(b) The arbitration will be administered by the American Arbitration Association ("AAA") in accordance with the Consumer Arbitration Rules (the "AAA Rules") then in effect.

The arbitrator will have exclusive authority to resolve any dispute relating to arbitrability and/or enforceability of this arbitration provision, including any unconscionability challenge or any other challenge that the arbitration provision or the Agreement is void, voidable or otherwise invalid. The arbitrator will be empowered to grant whatever relief would be available in court under law or in equity. Any award of the arbitrator will be final and binding on each of the parties and may be entered as a judgment in any court of competent jurisdiction.

If any provision of this arbitration agreement is found unenforceable, the unenforceable provision will be severed and the remaining arbitration terms will be enforced.

12. **Assignment.** You will not assign any of your rights or delegate any of your obligations under these Terms without our prior written consent. Any purported assignment or delegation is null and void.

13. **No Waivers.** The failure by us to enforce any right or provision of these Terms will not constitute a waiver of future enforcement of that right or provision. The waiver of any right or provision will be effective only if in writing and signed by a duly authorized representative of The Online Fence Store.

14. **No Third Party Beneficiaries.** These Terms do not and are not intended to confer any rights or remedies upon any person other than you.

15. **Notices.**

(a) **To You.** We may provide any notice to you under these Terms by: (i) sending a message to the email address you provide or (ii) by posting to the Site. Notices sent by email will be effective when we send the email and notices we provide by posting will be effective upon posting. It is your responsibility to keep your email address current.

(b) **To Us.** To give us notice under these Terms, you must contact us by certified mail to The Online Fence Store. Notices provided by certified mail will be effective three business days after they are sent.

16. **Severability.** If any provision of these Terms is invalid, illegal, void or unenforceable, then that provision will be deemed severed from these Terms and will not affect the validity or enforceability of the remaining provisions of these Terms.

17. **Entire Agreement.** Our order confirmation, these Terms, our Website Terms of Use and our Privacy Policy will be deemed the final and integrated agreement between you and us on the matters contained in these Terms.